

REMARKS

Applicant has amended the above-identified application in response to the non-final Office Action dated July 17, 2006 in the above-referenced application.

Applicant has further amended each of independent claims 1, 23 and 62, responsive to the Examiner's rejections both as to written description/enablement requirements (i.e., Sec. 112) as well as the prior art rejections. New claims 86-97, directed to a method of pasteurizing an in-shell egg, are withdrawn as noted by the Examiner. Accordingly, claims 1-37 and 62-73 remain pending.

Each of independent claims 1, 23 and 62 have been amended in order to address the Sec. 112, first paragraph rejection for failure to comply with the written requirement, see pages 2-3, paragraphs 2-3 of the Examiner's remarks. Specifically, each of the claims have been amended to remove reference to the term "predominately directed" in reference to the discrete applications of microwave energy in succession to the yolk and albumen of each in-shell egg.

In its place, each of the independent claims now specifically recites the application of a first quantity of energy imparted to the yolk and in order to heat the yolk to a first predetermined temperature. Following this, a second quantity of energy is imparted to the in-shell egg in order to raise the albumen to a second predetermined temperature, and thus in order to pasteurize the in-shell egg.

Support for these limitations is found throughout the specification including, by example and without limitation, page 5, lines 20-26, page 10, lines 31-37, and page 11, lines 10-28. The presently amended claims clearly read within the scope of the specification and are enabling since the initial quantity of microwave energy is targeted to increase the temperature of the yolk specifically (and apart from whatever residual effects to the albumen) and the successive

quantity of energy to further raise the temperature of the albumen (presumably apart from whatever incidental heating of the albumen resulted from the first burst of energy directed to the yolk) and in order to complete the individualized egg pasteurization. As such, the presently amended independent claims entirely avoid the necessity of having to support any particular degree of energy (microwave or otherwise) directed to the either the yolk or albumen.

As previously cited, WO 97/02751 (Purdue Research) teaches a process for pasteurizing in-shell eggs, and by which the application of microwave energy is taught as one possible variant for preheating an egg shell to a predetermined temperature near, but below pasteurization temperature (see page 6, line 30, et seq. in Purdue 97/02751). As further stated by Applicant, and in analyzing and applying the 97/02751 reference, the Examiner further stated that heating of the albumen and yolk to different temperatures would inherently occur due to the differences in material make up of the individual egg components.

Accounting for the differences from Purdue set forth in Applicant's previous response by Preliminary Amendment, and in view of the above, Applicant respectfully disagrees with the application of the Purdue reference as teaching or suggesting the ability to deliver discrete quantities of microwave energy first to an individual in-shell egg yolk and, successively, to its albumen in order to pasteurize the egg.

Rather, Purdue 97/02751 discloses microwave heating the shell of the egg in an initial preheat operation, this certainly not allowing the user to selectively input energy into the yolk or albumen in a substantially selected fashion. As further disclosed in Purdue (see page 3, lines 24, et. seq.) this heat transfer process is assisted by the reorientation or repositioning of each egg, either continuously or periodically, to promote heat transfer from the egg surface to the yolk. Accordingly, and in contrast to the Examiner's suggestions, Purdue in fact teaches away from the

present invention as recited in amended claims 1, 23, and 62 by requiring heat transfer from the egg surface inward, this being the reverse of the heat/microwave protocol established in the presently amended independent claims.

As further previously indicated by Applicant, and in rejecting claims under 35 U.S.C. §103, the Examiner bears the initial burden of presenting a *prima facie* case of obviousness. See *In re Rijckaert*, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A *prima facie* case of obviousness is established by presenting evidence that the reference teachings would appear to be sufficient for one of ordinary skill in the art having the references before him to make the proposed combination or modification. See *In re Litner*, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA, 1972). The conclusion that the claimed subject matter is *prima facie* obvious must be supported by evidence, as shown by some objective teaching in the prior art or by knowledge generally available to one of ordinary skill in the art that would have led that individual to combine the relevant teachings of the references to arrive at the claimed invention, see again *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d, 1596, 1598 (Fed. Cir. 1988).

Rejections based on §103 must instead rest on a factual basis with these facts being interpreted without hindsight reconstruction of the invention from the prior art. The Examiner may not, because of doubt that the invention is patentable, resort to speculation, unfounded assumption or hindsight reconstruction to supply deficiencies in the factual basis for the rejection. Rather, and when satisfying the burden of showing obviousness of the combination, the Examiner can show some objective teaching in the prior art or knowledge generally available to one of ordinary skill in the art which would lead that individual to combine the relevant teachings of the references. *In re Lee*, 277 F.3d 1338, 1343, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002), citing *In re Fritch*, 972 F.2d 1260, 1265, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992).

Furthermore, broad conclusory statement regarding the teaching of multiple references, standing alone, are not "evidence". *In re Dembiczak*, 173 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999). Mere denials and conclusory statements, however, are not sufficient to establish a genuine issue of material fact. *Dembiczak*, 175 F.3d at 999-1000, 50 USPQ2d at 1617, citing *McElmurry v. Arkansas Power & Light Co.*, 995 F.2d 1576, 1578, 27 USPQ2d 1129, 1131 (Fed. Cir. 1993).

Applying the above, Applicant submits that the failure of Purdue to teach or suggest any form of targeted application of microwave energy, and in particular first to the (center) yolk and successively to the (surface) albumen renders the present claims allowable. Accordingly, it is submitted that the present claims are not inherently obvious to Purdue, simply because the prior art reference teaches microwave preheating of the egg shell. The present invention of claims 1, 23 and 62 again in fact clearly distinguishes from Purdue in that it requires the microwave protocol to be reversed from that recited in the amended independent claims to successively heat (and pasteurize) from the yolk center outwards.

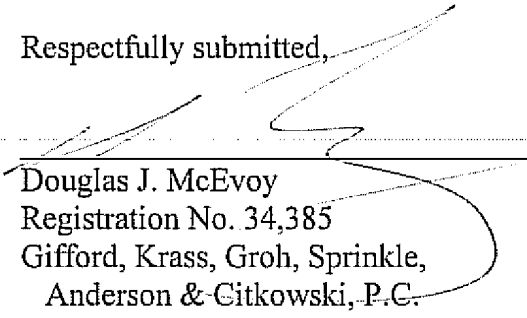
Addressing further the Examiner's comments, the argument is again made that the microwave component in Purdue has the ability to change time and energy constraints to be able to perform the particular strategy steps set forth in the claims. Applicant first disagrees that one of ordinary skill in the art would reasonably be expected to, or capable of, performing predominantly individualized and successive heating of the in-shell yolk and albumen without specific ability or teaching to calibrate and effectively deliver quantum of energy to the yolk and albumen in respective fashion. The further recitation of the input parameter intended to modulate the yolk directed energy as a parameter of either or both size or preexisting temperature is also not taught or suggested in Purdue and, beyond the Examiner's open ended

opinion that it would be obvious to retool and recalibrate the device of Purdue, no suggestion or teaching is found supporting the Examiner's opinion.

Applicant further submits that each of the secondary cited references are unrelated to the microwave pasteurization aspects argued in reference to each amended independent claim, these patentably distinguishing features are likewise submitted to apply to the other cited prior art. Particular reference is made to the egg weighing means set forth in Niederer, the egg washing method of JP 2000/014269, the blemish inspection apparatus of van der Schoot and, finally, the grading machine of Anschutz.

In view of the above, the claims in the present application are submitted to be allowable and favorable action is requested. Attorney for Applicant may be contacted at (248) 647-6000 with any questions the Examiner may have.

Respectfully submitted,



Douglas J. McEvoy
Registration No. 34,385
Gifford, Krass, Groh, Sprinkle,
Anderson & Citkowski, P.C.
2701 Troy Center Drive, Suite 330
P.O. Box 7021
Troy, MI 48007-7021
(248) 647-6000

Attorney for Applicant